

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 12 2003

OFFICE OF
MANAGING DIRECTOR

Mr. Walter H. Sonnenfeldt
Walter Sonnenfeldt & Associates
14732 Jaystone Drive
Silver Spring, Maryland 20905

Re: Request for Waiver of Extension of
Construction Authorization Application Fee
Fee Control No. 00000RROG-03-070

Dear Mr. Sonnenfeldt:

This is in response to your letter dated February 14, 2003, in which you supplement your earlier request on behalf of ORBCOMM LLC and ORBCOMM License Corp. (ORBCOMM) to defer and waive any fees that may be associated with the submission of its "Request for Extension of Launch Authority" (the "ORBCOMM request"). By letter dated January 22, 2003, we dismissed your waiver request with leave to refile together with appropriate supporting documentation. The fees associated with the ORBCOMM request, which seeks extension of performance milestones associated with the FCC authorization for the ORBCOMM NVNG mobile satellite service system, issued under FCC Call Sign S2103, total \$24,270.

You argue that ORBCOMM cannot afford to pay these fees without facing the possibility of being forced to substantially curtail or even completely discontinue services it provides to its customers. You state that this is not so much a question of whether ORBCOMM meets the fee standard of financial hardship but rather a question of its ability to continue the successful recovery of the ORBCOMM from bankruptcy. You cite to the initial order implementing Section 9 of the Communications Act and state that these are clearly "extraordinary and compelling circumstances ... outweighing the public interest in recouping the cost of the Commission's regulatory services." *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd. 5333, 5344 at para. 29 (1994).

In support of this statement, you incorporate by reference a declaration from Don Franco, ORBCOMM's Chief Financial Officer, together with a consolidated balance sheet and statement of operations for the period ended December 31, 2002. You also request that we provide confidential treatment to this financial data. Pursuant to Section 0.459(d)(1) of the Commission's rules, 47 C.F.R. 0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your petition is received, you will be notified and afforded the opportunity to respond at that time.

The Commission elaborated on the meaning of the standard you quote above in a subsequent order implementing Section 9, and it is clear that this standard refers to defining financial hardship:

In the FY 1994 Report and Order, ...we stated that we would waive the regulatory fees "on a case by case basis in extraordinary and compelling circumstances upon a showing that a waiver ... would override the public interest in reimbursing the Commission for its regulatory costs." While the FY 1994 report and Order provides that applicants seeking waivers should submit documentation with relevant information, it did not establish specific standards for waivers of the fees or define with specificity what information would be required. We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather, we will grant a waiver only when the impact of the regulatory fee will affect the regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public. In order to establish a basis for waiver predicated on financial need, regulatees ... may be asked to provide information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd 12759, 12761 at paras. 12-13 (1995).

As we stated in our January 22, 2003 letter, in determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, and payments to principals reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

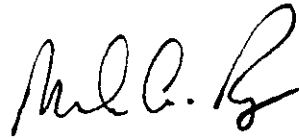
The pleadings and supporting documents you submit do not provide sufficient information to determine ORBCOMM's cash flow for the applicable period. The income statement shows that for the period ending December 31, 2002, ORBCOMM's net loss was \$2,632,733.19, its depreciation was \$1,342,389.69, and its salary and wages were \$5,621,847.19. The income statement, however, does not state what portion, if any, of the salary and wages are attributable to payments to principals, which must be considered in determining cash flow that may be available to pay the fee. In this regard, it also does not provide any detail in support of the statement in Mr. Franco's declaration that "certain officers of the company have deferred some or all of their salaries to allow funds to be used for other operational costs."

Mr. Walter H. Sonnenfeldt

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In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for waiver of ORBCOMM's filing fee is denied. Payment of ORBCOMM's filing fee of \$24,270.00 is now due. The fee should be filed together with FCC Forms 701 and 159 (copies enclosed) within 30 days from the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with the first name "Mark" and last name "Reger" clearly distinguishable.

Mark A. Reger
Chief Financial Officer

Enclosures